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Case No. 1:08CR00037-002

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V.

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## OPINION

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**DEDRA CAROL SPAFFORD,**

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By: James P. Jones

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United States District Judge

Defendant.

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*Dennis H. Lee, Special Assistant United States Attorney, Abingdon, Virginia,  
for United States; Dedra Carol Spafford, Pro Se Defendant.*

Defendant, a federal inmate proceeding pro se, brings this Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C.A. § 2255 (West Supp. 2010).

The government has filed a Motion to Dismiss and defendant has responded, making the matter ripe for disposition. Upon review of the record, I find that the defendant's § 2255 motion must be denied; the government's Motion is thus granted.

# I

Defendant, Dedra Carol Spafford (“Spafford”), and her husband were indicted in this court on August 26, 2008, in a seven-count Indictment. Count One of the Indictment charged Spafford with conspiring to possess and distribute oxycodone,

methadone, and alprazolam in violation of 21 U.S.C.A. § 841(a)(1) and (b)(1)(C) (West 1999 & Supp. 2010), as well as 21 U.S.C.A. § 846 (West 1999). The next five counts of the Indictment charged Spafford with involvement in various drug sales. The final count of the Indictment charged her husband with gun possession while being an unlawful user of a controlled substance.

On January 9, 2009, Spafford executed a written Plea Agreement. Spafford pleaded guilty to Count One of the Indictment. The government agreed to dismiss the remaining counts against her and to recommend that she receive a three-level adjustment to her sentencing guidelines calculation for acceptance of responsibility. By the terms of her plea agreement, Spafford also waived the right to appeal or make collateral attacks on her sentence. Further, she acknowledged that she had received effective assistance of counsel. I conducted a plea hearing on January 9, 2009, and Spafford pleaded guilty pursuant to that Plea Agreement.

Prior to the sentencing hearing, Spafford's attorney filed a Sentencing Memorandum arguing that she was no longer a danger to society, setting out her prior drug use, and arguing that she had overcome those addictions. Additionally, her attorney made a number of objections to the Presentence Investigation Report ("PSR") in communications with the United States Probation Office.

On July 8, 2009, I sentenced Spafford to 108 months of incarceration, as well as five years of supervised release. I gave her a reduction of three levels in the calculation of her offense level for acceptance of responsibility. Spafford did not file a direct appeal. She timely filed this § 2255 motion.

## II

To state a claim for relief under § 2255, a federal defendant must show that one of the following occurred, (1) his or her sentence was “imposed in violation of the Constitution or laws of the United States”; (2) “the court was without jurisdiction to impose such sentence”; (3) “the sentence was in excess of the maximum authorized by law”; or (4) the sentence “is otherwise subject to collateral attack.” 28 U.S.C.A. § 2255(a). In a § 2255 motion, the defendant bears the burden of proving grounds for a collateral attack by a preponderance of the evidence. *Miller v. United States*, 261 F.2d 546, 547 (4th Cir. 1958). A court may rule on the basis of the filings if “the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief . . . .” 28 U.S.C.A. § 2255(b).

### III

Spafford challenges her sentence, arguing that some of the adjustments applied to her federal sentencing guidelines calculation were inappropriate and that her counsel provided ineffective assistance by failing to raise various objections to the PSR. The government argues that her claims are waived, defaulted or otherwise fail. As is explained below, I find that each of her claims fail.

#### A. WAIVER OF COLLATERAL ATTACK RIGHT.

The government first argues that Spafford's § 2255 motion must be dismissed because she waived the right to collaterally attack her conviction or sentence as part of her plea agreement. The United States Court of Appeals for the Fourth Circuit has held that a defendant may validly waive the right to attack a conviction or sentence as long as that waiver is knowingly and voluntarily made. *United States v. Lemaster*, 403 F.3d 216, 220 (4th Cir. 2005). However, the court is unable to adequately review whether the waiver was made knowingly and voluntarily because the government has not arranged for the preparation of or submitted a transcript of the guilty plea hearing. *See id.* at 221-23 (concluding that district court need not have held evidentiary hearing on validity of waiver where knowing and voluntariness conclusively established by Rule 11 colloquy and sentencing hearing). Accordingly, I decline to dismiss the § 2255 motion on this ground.

#### B. PROCEDURAL DEFAULT.

Next, the government argues that Spafford's direct attacks on her sentence are procedurally defaulted. A collateral attack under § 2255 may not substitute for an appeal. Claims regarding trial errors that could have been, but were not raised on direct appeal are barred from review under § 2255, unless the defendant shows cause for the default and actual prejudice resulting from such errors, or demonstrates that a miscarriage of justice would result from the refusal of the court to entertain the collateral attack. *See United States v. Mikalajunas*, 186 F.3d 490, 492-93 (4th Cir. 1999). Spafford did not file a direct appeal in this matter, nor has she set out any grounds showing that a miscarriage of justice would occur if the court refused to entertain the collateral attack. Thus, her direct attacks on the PSR are procedurally defaulted and accordingly will be denied.

#### C. INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS.

To the degree that Spafford raises ineffective assistance of counsel claims, these claims are properly raised on collateral attack. However, to prove that counsel's representation was so defective as to require reversal of the conviction or sentence, Spafford must meet a two-prong standard. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). First, she must show that "counsel's representation fell below an

objective standard of reasonableness,” considering circumstances as they existed at the time of the representation. *Id.* at 687-88. In making such a case, a defendant must overcome a strong presumption that counsel’s performance was within the range of competence demanded from attorneys defending criminal cases. *Id.* at 689. Second, she must show prejudice, i.e., a “reasonable probability” that but for counsel’s errors the outcome would have been different. *Id.* at 694-95. In the sentencing context, a prisoner may demonstrate prejudice by showing that he or she received additional prison time at sentencing. *Glover v. United States*, 531 U.S. 198, 203-04 (2001); *United States v. Soto*, 10 F. App’x 226, 227-28 (4th Cir. 2001) (applying *Glover* to sentence challenge where defendant pleaded guilty).

Spafford asserts that counsel did not give her a copy of the PSR and told her not to talk during the sentencing hearing. As such, she claims that counsel allowed the introduction of a number of errors into the PSR. Upon review it is clear that Spafford’s claims do not establish ineffective assistance of counsel.<sup>1</sup>

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<sup>1</sup> Spafford’s initial motion includes a factual narration that complains of treatment by the law enforcement members who allegedly raided Spafford’s residence. She also claims that her minor son has on-going problems associated with this raid. Such claims are not appropriate under § 2255.

### 1. Drug Amount Attributed to Spafford.

Spafford argues that the PSR erred in its calculation of the drug amount applicable to determining her sentence, as it included drugs that her husband transported. Spafford seems to contend that her husband's transportation of drugs should not be attributed to her, because such transportation took place before she joined the conspiracy.

Spafford's claim fails because she pleaded guilty to being part of the conspiracy beginning in the year 2000, which is prior to the time of the contested drug transfers. Under the federal sentencing guidelines, co-conspirators are liable for "all reasonably foreseeable acts and omissions of others in furtherance of the jointly undertaken criminal activity." U.S. Sentencing Guidelines Manual ("U.S.S.G.") § 1B1.3(a)(1)(B). Thus, she has not made any showing that her counsel acted unreasonably or that she suffered prejudice, i.e., that there is a reasonable probability that her sentence would have been different. *Glover*, 531 U.S. at 203-04.

In an attempt to counter this straightforward logic, Spafford relies on an explanatory note from the commentary on the sentencing guidelines that states "Defendant O is not accountable for the other drug sales made by her boyfriend because those sales were not in furtherance of her jointly undertaken criminal activity." U.S.S.G. § 1B1.3 cmt. n.2 (illus. c.5). However, Spafford has not made any

showing that her husband's drug transfers were not part of their drug conspiracy. Accordingly, she cannot demonstrate that her counsel acted unreasonably in failing to object to the drug calculation. Moreover, she has not made any showing of prejudice, as she has not indicated any real error in the sentencing calculation.

## 2. Firearms Adjustment.

Spafford next argues that her counsel was ineffective for not objecting to an upward adjustment in her federal guidelines calculation based upon the presence of firearms in her home, where she also sold drugs. Spafford claims that counsel showed her a list of objections that counsel intended to bring, including an objection to the firearms adjustment, but that counsel failed to actually bring that firearms objection.<sup>2</sup>

Spafford's argument fails because the record reveals that her trial counsel did in fact object to the firearms adjustment. As such, Spafford cannot show that her counsel acted unreasonably, as he acted as she wished. To the degree that Spafford complains that he brought the claim in a manner different than that originally proposed, her claim also fails. Counsel have a wide range of discretion in framing

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<sup>2</sup> Spafford also includes case law regarding the gun charge included in Count Seven of the Indictment. However, this charge was against her husband and not her.



their arguments. Any variance between the proposed objection and the actual objection was stylistic and not substantive.

### 3. Downward Departure for Family Circumstances.

Spafford further claims that she should have received a downward departure at sentencing because of family circumstances. She notes that her minor son's Attention Deficit/Hyperactivity Disorder has worsened over the course of her incarceration.

To the degree that Spafford raises this claim as an ineffective assistance of counsel claim, she has not set forth facts showing that her counsel was unreasonable for raising her family circumstances as grounds for a downward departure. “[F]amily ties and responsibilities are not ordinarily relevant in determining whether a departure [from the sentencing guidelines] may be warranted.” U.S.S.G. § 5H1.6. In considering whether a departure is warranted, the court is to look at the seriousness of the offense, the involvement of family members, and the danger to the family. U.S.S.G. § 5H1.6 cmt. n.1. Further, in considering the loss of a family caretaker, the guidelines require that a court consider whether “the loss of caretaking or financial support is one for which no effective remedial or ameliorative programs reasonably are available” such that the defendant is “irreplaceable.” U.S.S.G. § 5H1.6 cmt. n.1.

Spafford's claims fail because she has not set forth grounds showing that her caretaking services for her son were irreplaceable. Further, if faced with such a request, I would have been required to weigh the severity of Spafford's drug crime, the fact that drug transactions occurred in the family home, and that there were firearms present at the home. These factors would have weighed against granting Spafford a downward departure as they created potential danger for her son. Thus, Spafford has not made a showing that her attorney was unreasonable for not raising her minor son as grounds for a downward departure from the guidelines. In the alternative, she has not shown a reasonable probability that I would have given her a lighter sentence.

Further, Spafford appears to argue that the I should now grant her relief so that she can care for her son. Though her son's condition is unfortunate, these are not grounds for granting a new sentence under § 2255.

#### 4. Miscellaneous Requests.

Lastly, Spafford briefly raises a variety of grounds that she believes are applicable to her PSR. Spafford contends that counsel failed to review the amended PSR with her and told her not to talk during the sentencing hearing. However, Spafford cannot demonstrate ineffective assistance of counsel because she has not

established that her sentence was made longer as a result of this alleged harm. Thus, she has not established prejudice, as is required by *Strickland* and *Glover*.

Spafford also argues that she was entitled to a downward departure pursuant to U.S.S.G. § 3B1.2 because she was less culpable than her husband and merely pleaded guilty to keep the peace in her household. However, Spafford pleaded guilty to a conspiracy beginning in 2000. She admitted to carrying out drug transactions as often as once or twice a week. The facts show that she in fact was culpable and was active in the conspiracy. Her current assertions do not overcome her prior admissions. As such, she has not set forth grounds showing that she was entitled to a downward departure, or that her counsel was unreasonable for failing to raise this ground at the time of trial.

Spafford additionally requests that I place her in home detention as an alternative to incarceration, recommend early termination of supervised release, and expunge her conviction after successful completion of her supervised release. To the degree she seeks to have these adjustments applied to her sentence now, her claims fail because they are not proper relief under § 2255, as she is not entitled to a new sentence. Further, to the degree she raises these claims as ineffective assistance of counsel claims, Spafford's allegations fail because she cannot show that her counsel ignored meritorious claims that would have led to a lower sentence.

Under the federal guidelines, “[h]ome detention may be imposed as a condition of probation or supervised release, but only as a substitute for imprisonment.” U.S.S.G. § 5F1.2. Given the severity of Spafford’s crime and the amount of time in her advisory guidelines range, she cannot show that her counsel was unreasonable for failing to request home confinement in lieu of imprisonment.

Further, Spafford was not and is not eligible for early termination of her supervised release because it may only be ended “after the expiration of one year of supervised release . . . .” 18 U.S.C.A. § 3583(e)(1) (West 2000 & Supp. 2010). Spafford’s attorney could not have raised this at sentencing because Spafford had not yet served a year of supervised release. Moreover, she has made no such showing that it is appropriate at this juncture.

Finally, Spafford requests that her conviction be expunged. However, the legal grounds she relies upon are from California state court. She has not made any showing that her conviction should have been expunged pursuant to federal law either prior to her sentencing or at this time.

IV

For the foregoing reasons, I deny Spafford's § 2255 motion and I grant the government's Motion to Dismiss. A separate Final Order will be entered herewith.

ENTER: July 28, 2010

/s/ JAMES P. JONES  
United States District Judge